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General and complete disarmament: observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control

Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control

Report of the Secretary-General

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* A/59/50 and Corr.1.

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I. Introduction

1. On 8 December 2003, the General Assembly adopted resolution 58/45, entitled "Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control", in paragraph 4 of which the Assembly invited all Member States to communicate to the Secretary-General information on the measures they have adopted to promote the objectives envisaged in the resolution, and requested the Secretary-General to submit a report containing this information to the General Assembly at its fifty-ninth session.

2. Pursuant to that request, on 24 March 2004, a note verbale was sent to Member States inviting them to provide information on the subject. The replies received are reproduced in section II below. Additional replies received will be issued as addenda to the present report.

II. Replies received from Governments

Guatemala

[Original: Spanish]
[8 June 2004]

The Guatemalan Army does not have any nuclear weapons and therefore it has no plans relating to nuclear disarmament. It is not engaged in any research in that area. That is the situation throughout Central America.

Honduras

[Original: Spanish]
[15 June 2004]

(a) Honduras does not have, nor has it ever had, any programme for the manufacture, stockpiling or acquisition of chemical or biological weapons;

(b) Honduras does have legal instruments for the control and management of its environmental policy; the latter provides for mechanisms for the protection of the environment;

(c) Honduras is currently a signatory to international treaties and conventions relating to protection of the environment;

(d) The Honduran Armed Forces base their military plans, operations and activities on the Government's environmental policy; moreover, they are working with the Government, through the Ministry of Natural Resources and the Environment, to preserve the stability and support the rehabilitation of the environment by developing projects to protect ecological reserves, fight fires, promote reforestation and take care of water supplies;

(e) The various economic development projects that the Republic of Honduras is currently undertaking are designed to protect and preserve the environment.

Mexico

[Original: Spanish]
[21 April 2004]

For Mexico, implementation of the principles of the Charter of the United Nations, including the aim of maintenance of international peace and security by drawing up and implementing agreements on disarmament and arms control must be pursued in a manner consistent with applicable environmental norms, both customary and conventional.

One very important development in international law in recent decades has been the creation of norms for the protection of the environment. This system consists of primary rules pertaining to responsibility and mechanisms for the establishment of rules relating thereto and secondary rules which seek to establish the rights and obligations of States and other subjects of international law with respect to specific issues of concern to the international community with regard to the environment.

However, these norms should not be viewed in isolation, but in the context of the international law of which they form a part. The different areas of international law interact with one another since there are a variety of norms regulating the same acts. Accordingly, although there are no disarmament norms that prohibit weapons the use of which would have a negative impact on the environment, this does not mean that such weapons are permitted under international law. In order to come to a decision on the legality of their use, it is necessary to consider the obligations of States in the context of international law for the protection of the environment.

Mexico has always taken account of the interrelationship between norms and has therefore adopted a position in support of disarmament. It has stated in various forums that, given their destructive nature and the impact they have on all forms of life, weapons of mass destruction — particularly nuclear weapons — should be eradicated.

The importance of protecting the environment has given rise to an understanding of the need to start adopting laws to protect the environment in the context of different areas of international law. One clear example is the identification in international humanitarian law of norms to ensure environmental protection. Attention should be drawn to the advisory opinion concerning the Legality of the Threat or Use of Nuclear Weapons rendered by the International Court of Justice on 8 July 1996, whereby the Court, for the first time, made a specific pronouncement regarding the legal nature of certain obligations of environmental law and on their application with regard to possible situations of use or threat of use of nuclear weapons.

The Court recognized that the environment, the physical space where biodiversity develops and that determines the quality of life and health of present and future generations is under daily threat and affirmed that the use of nuclear weapons could produce an environmental catastrophe. Accordingly, States had a general unassailable legal obligation which was generally accepted by the international community and stated in a number of international instruments, including in the preamble to the Charter of the United Nations. That obligation was intimately related to the effects of weapons of mass destruction, which could

potentially be catastrophic not only for our generation or the next but also for future generations.

It should be noted that the Court reiterated as a general customary norm of international environmental law, the principle of good neighbourliness, whereby all States had an obligation to ensure that activities within their jurisdiction or control did not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction (this principle with slight variations thereof has been established in the Declaration on the Human Environment, adopted in Stockholm in 1972, the Rio Declaration on Environment and Development (1992) and the *Trail Smelter* and *Lake Lanoux* arbitral awards). Mexico agrees with the Court that this general norm is applicable to disarmament and arms control agreements, since the use of weapons of mass destruction, particularly nuclear weapons, would have uncontrollable effects that could not be restricted in space or in time and that by their very nature might have an adverse impact on the space and property of another State.

Although the Court was of the view that the provisions of treaties on international environmental law did not prevent States from exercising their right to self-defence, it did establish that States must take environmental considerations into account when assessing what was a necessary and proportionate response in the event of an armed attack. It also pointed out that articles 35, paragraph 3, and 55 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating the Protection of Victims of International Armed Conflicts (Protocol I) provided additional protection for the environment during armed conflicts.

Because of the special characteristics of the conventional rules governing international environmental law — whose ultimate aim, like those governing human rights law, is to safeguard the interests of humanity and not merely that of particular States and the fact that violation would have a direct impart on the lifestyle of members of present and future generations, violation of an environmental treaty does not open the possibility of applying article 60 of the Vienna Convention on the Law of Treaties, which establishes that breach of a treaty may be grounds for terminating the treaty. It is therefore important to point out the violation of a conventional norm by one belligerent State cannot be invoked by the other State as a ground for violating these environmental provisions.

The Rome Statute of the International Criminal Court also establishes a close link between international environmental law and international humanitarian law for article 8 thereof defines intentionally launching an attack in the knowledge that such attack will cause severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated as a war crime.

From the foregoing analysis Mexico has concluded that, even taking into account the fact that international environmental law does not establish specific norms with regard to disarmament and arms control, it does, by its very nature, place important limits on the use of certain types of weapons and therefore must be taken into account in the negotiation of norms for disarmament and arms control. Mexico believes that the duties of States in respect of international environmental law are designed, by their very nature, to prohibit any type of arms that would cause significant damage to the environment.

By way of an example of the respect that it has for the general environmental norms in disarmament and arms control agreements, on 29 March 2004, Mexico signed an Additional Protocol to its safeguards agreement with IAEA, in keeping with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco). It did so knowing that this expression of a legal link reaffirms its commitment to nuclear disarmament and in full knowledge of the fact that this will contribute to prevention of any harmful effect to the environment stemming from lack of protection and safety measures in nuclear activities, materials and facilities.